

Application No.: 09/532,791

Request for Reconsideration under 37 C.F.R. §1.111 dated December 14, 2004

Response to the Office Action of September 14, 2004

### **REMARKS**

Claims 1 – 21 remain pending in the present application. No claim amendments have been made. The rejections set forth in the Office Action are respectfully traversed below. Reconsideration of this application is respectfully requested.

#### **Improper Prior Art**

The present Office Action makes the new reference to **Goto et al.** (USP 6,533,676) in order to reject the claims under 35 U.S.C. §103. However, the new reference to **Goto** is improper because **Goto** does not qualify as prior art against the present application. In order to qualify as prior art under §103, the cited prior art reference must first qualify as prior art under one of the provisions of 35 U.S.C. §102. **Goto** does not qualify as prior art under any of the provisions under §102.

In particular, **Goto** was issued February 18, 2003, with a U.S. filing date of January 27, 2000. The only possibly relevant provision would be 35 U.S.C. §102(e). However, §102(e) requires that the reference be “by another.” **Goto** is *not* “by another.” Instead, the newly cited prior art to **Goto** is by the *same* inventors (and the same Assignee) as in the present application. In addition, it should also be noted that the present application benefits from a foreign priority date of March 24, 1999, which would antedate the **Goto** reference (but, of course, it is not necessary to antedate **Goto** in the present situation since **Goto** is not a reference “by another” as noted above).

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For at least these reasons, the prior art rejections are improper since there is no statutory basis to qualify the reference as prior art. Therefore, the prior art rejections should be withdrawn. If, for any reason, it is felt that this application is not now in condition for allowance, the Examiner is requested to contact the undersigned attorney at the telephone number indicated below to arrange for an interview to expedite the disposition of this case.

In the event that this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. Please charge any fees for such an extension of time and any other fees which may be due with respect to this paper, to Deposit Account No. 50-2866.

Respectfully Submitted,

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